GARFIELD PHILLIPS,
Plaintiff-Appellant,
v.
JOHN MEZERA, et al.,
Defendants-Appellees.

No. 03-1068

United States Court of Appeals
For the Seventh Circuit

Submitted December 10, 2003
Decided December 11, 2003

UNPUBLISHED ORDER

Garfield Phillips, an African American, owned rental property in Joliet, Illinois. In late 1997 a city building inspector visited the property and cited it for 34 code violations. Three inspections and two administrative hearings later, the property was condemned as unfit for human habitation. Phillips requested another hearing to appeal the decision, but not was granted.

Phillips then sued the City of Joliet and four of its officials, alleging race discrimination, deprivation of property without due process, and negligence (a variation on the due-process claim). The district court dismissed the due-process counts because Phillips's own complaint demonstrated that the city gave him notice and an opportunity to be heard, which is all that due process requires. See *Wainscott v. Henry*, 315 F.3d 844, 852-53 (7th Cir. 2003). The race-discrimination counts were disposed

of at summary judgment after Phillips was unable to identify any similarly situated property owners whom the city had treated any better.

In his appellate brief, Phillips argues vaguely that the district court used improper "tools of analysis," mishandled certain discovery matters, and failed to resolve various unspecified "material facts." Even liberally construed, see *Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001), these arguments fail to call into question the correctness of the district court's rulings.

* After an examination of the appellant's brief and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the brief and the record. *See* Fed. R. App. P. 34(a)(2).

AFFIRMED.

GARFIELD PHILLIPS,

Plaintiff,

v.

JOHN MEZERA, et al.,

Defendants.

United States District Court
Northern District of Illinois

No. 00 C 3348

MEMORANDUM OPINION AND ORDER

Plaintiff Garfield Phillips ("Phillips") owned a two-unit apartment building in the City of Joliet. Citing multiple uncorrected housing code violations, Joliet officials evicted Phillips' tenants in July 1998. In this lawsuit, Phillips alleges that Joliet officials violated his civil rights when they evicted his tenants and interfered in the renewal of his HUD Section 8 Moderate Housing Contract. Those named as Defendants include: John Mezera ("Mezera"), the City Manager for the City of Joliet; Joyce Toso ("Toso"), the Property Maintenance Coordinator for the City of Joliet; Mary Kucharz ("Kucharz"), Assistant Corporation Counsel for the City of Joliet; and James Shapard ("Shapard"), Deputy City Manager for the City of Joliet (collectively "Defendants"). On October 31, 2001, this court dismissed all but two of Phillips; five causes of action against the City of Joliet and several of its employees.[1] *Phillips v. Mezera*, No. 00 C 3348,

---

[1] Phillips complained in his original complaint that he was deprived of his property without due process of law and that city officials acted negligently with regard to his case. As explained in the court's earlier opinion, Phillips' own allegations defeated his due process claims,

2001 WL 1345983 (N.D. Ill. Oct. 31, 2001). Defendants have now moved for summary judgment on the remaining two counts. Because Phillips is *pro se*, Defendants provided him with a notice describing the appropriate response to such a motion, and the matter is now full briefed.

FACTUAL BACKGROUND

The following facts are taken from the parties' Local rule 56.1(a)(3) and (b)(3) Statements of Material Facts.[2] As filed, these Statements reflected the existence of a number of factual disputes, but, as explained below, the court concludes the disputes are not material to the outcome of this case.

Phillips, an African-American male, is the former owner of a two-unit dwelling at 26-28 Union Street in Joliet, Illinois. Until July 1998, Phillips had a HUD Section 8 Moderate Rehabilitation Housing Contract with the Housing Authority of Joliet ("HAJ").[3]
His contract for 28 Union Street was terminated in July 1998 after the HAJ learned that Phillips' tenants had been evicted and his property condemned by Defendant City of Joliet ("Joliet"). Phillips provides a letter from Joyce Johnson of the HAJ as evidence of the cancellation of his Section 8

---

and he did not identify any legally cognizable tort claims. What survived the earlier motion to dismiss were Phillips' claims for violation of Sections 1981 and 1982 of the Civil Rights Act of 1866. The parties pursued discovery on those claims, and Defendants now seek summary judgment in their favor.

[2] Phillips has objected to Defendants' Statement of Additional Mater Facts, filed on August 1, 2002, arguing that this Statement is not contemplated by the court's rules. The court need not rule on this objection, however, because in need not consider Defendants; additional facts in order to conclude that Defendants are entitled to judgment. For purposes of this ruling, the court has considered only these materials: Defendants' Statement of Material Facts (hereinafter "Defs." 56.1"), Defendants' Supplement to Statement of Material Facts ("Defs.' Supp."), Phillips' Statement of Additional Material Facts ("Pl.'s 56.1 Resp."), and documents submitted in support of those statements.

[3] Neither party has offered an explanation of the significance of such a contract, but the court understand that it authorizes Phillips to rent property to person eligible for federally-subsidized housing.

BEST AVAILABLE COPY

contract. (Letter from Johnson to Phillips of 7/10/98, Ex. P to Pl.'s 56.1 Resp.) Because this letter, offered by Phillips as evidence of Defendants' wrongdoing, makes no mention of the Section 8 contract for 26 Union Street, the court concludes that for the purpose os this decision, only the contract for 28 Union Street is at issue. Phillips claims the eviction and condemnation of his property was a product of race discrimination by Joliet officials. He also claims the cancellation of his Section 8 contract made it impossible for him to make his monthly mortgage payments on the property, resulting in a foreclosure action. (Pl.'s 56.1 Resp. at 7.)

Joliet maintains that it inspects all rental housing within its corporate limits pursuant to the Code of Ordinance, without regard to the race of the property owner. In fact, Joliet officials do not maintain records indicating the race of property owners, and Defendants insist they do not take race into account in any official business. In particular, Defendants urge they did not take action in regard to 26-28 Union Street based upon Phillips' race, nor did they discriminate against Phillips, (*Id.* ¶¶ 16-21, 23-37; Defs.' Supp. ¶¶ 81-83, 86, 87, 89.)

As the uncontested facts show, Phillips purchased the two-unit property at 26-28 Union Street in December 1994. As part of the property transaction, Phillips became the holder of a fifteen-year HUD Section 8 Moderate Housing contract issued on April 1, 1985. (Pl.'s 56.1 Resp. ¶ 1.) Also received in the property transfer was a four-year Certificate of Inspection issued by the City of Joliet to the previous owner. (*Id.* ¶ 4.) On August 29, 1997, Defendant Joyce Toso sent correspondence to Phillips notifying him that an inspection of his property was scheduled for September 5, 1997. (Toso Aff. ¶ 12, Ex. 3 to Defs.' 56.1.) Due to Phillips' absence from the property, no inspection occurred on that date. (Defs. 56.1 ¶ 43.) The record is silent as to the reasons for Phillips' absence; nor has either party explained what instructions, if any, Phillips was given about re-scheduling the inspection.

Phillips next received a Notice of Pending Closure Action from the City of Joliet dated September 25, 1997, stating that if he failed to allow an inspection by October 6,1997, his building would be posted unfit for occupancy. (Notice of Pending Closure Action of 9/25/97, Ex. 3 to Defs.'

56.1.) On October 6, 1997 Ken Alexander ("Alexander"), an inspector for the Neighborhood Service Department for the City of Joliet, inspected the property and found 34 code violations. (List of Violations from Inspection of 10/6/97, Ex. 3 to Defs.' 56.1.) Included among the violations were the lack of a smoke detector in one unit, a leaky faucet, windows that did not open or were broken, a defective guard rail on the porch, a defective stove, and various electric problems. (Emergency Action Notice of 10/10/97 and List of Violations from Inspection of 10/6/97, Ex. 3 to Defs.' 56.1.) On November 19,1997, Phillips called Alexander and stated that he needed thirty days to make the repairs. A reinspection was scheduled for December 19, 1997.

For reasons again unexplained, Phillips was not present for the Inspection on December 19. (Defs.' 56.1 ¶¶ 47, 48.) On January 28, 1998, Alexander returned to attempt inspection again, but again Phillips was not at the property (there is no indication whether he had been advised of this date.) (*Id.* ¶ 49.) The same day, Toso issued another Notice of Pending Closure Action; that notice warned that unless Phillips corrected the violations before March 11, 1998, Joliet officials would post the building not approved for occupancy. (*Id.* ¶ 50.)

On March 11, 1998 Alexander inspected 26 Union Street and found that the violations in that unit had not been corrected. (Alexander Aff. ¶ 18, Toso Aff. ¶ 21, Exs. 2 & 3 to Defs.' 56.1.) Because neither Phillips nor the tenant was present at 28 Union Street, Alexander was unable to inspect that unit. Both properties were post "(n)ot approved for occupancy." (*Id.*) On March 13, 1998, Toso issued a third Notice of Pending Closure Action indicating a full inspection had to be conducted by March 27, 1998. (*Id.* ¶ 52.) Also on March 13, Joliet officials advised Phillips' tenants that if their landlord failed to allow an inspection prior to March 27, 1998, the building would have to be vacated. (Notices of Pending Closure Action of 3/13/98, Ex. 3 to Defs.' 56.1.) Alexander inspected the property on March 27, 1998 and found 26 code violations, (Defs.' 56.1 ¶ 53), many of them identical to those found on October 6, 1997. (List of Violations from Inspection of 3/27/98, Ex. 3 to Defs.' 56.1)

On April 6, 1998, Toso sent a Notice of Property Maintenance Code

Violations to Phillips indicating that his property had to be reinspected due to the code violations found on March 27, 1998. (Toso Aff. ¶ 224, Ex. 3 to Defs.' 56.1.) The mailing included a recommended procedure for correcting each of the 26 violations. (List of Violations from Inspection of 4/30/98, Ex. 3 to Defs.' 56.1.) The Notice explained that failure to correct the violations could result in legal action and notified Phillips that he had a right to a hearing concerning the violations, a right he could exercise by filing a written hearing request with the City Manager within 72 hours of receipt of the notice. (Letter from Toso to Phillips of 4/6/98, Ex. 3 to Defs.' 56.1.) Joliet officials also sent Phillips an invoice for $168.00 in reinspection fees. The April 6, 1998 invoice notes that Phillips previously owed the city $114.00, and currently owed $54.00, for a total of $168.00. (Rental inspection invoice for Reinspection of 4/6/98, Ex. 3 to Defs.' 56.1.) Defendants do not provide an explanation of how these figures were calculated, although Toso's letter of April 6, 1998 indicates that there is a $10.00 per unit charge for the first reinspection, with a $18.00 charge per unit for all subsequent reinspections. (Letter from Toso to Phillips of 4/6/98, Ex. 3 to Defs.' 56.1) On April 21, 1998, Kucharz sent a Notice of Hearing to Phillips pursuant to Joliet ordinance 8-160.[4] There is no indication that Phillips himself requested the hearing; instead, it appears to have been scheduled at the initiative of city officials. (Notice of Hearing of 4/21/98, Ex. 4 to Defs.' 56.1.)

A. The April 29, 1998 Hearing

The City of Joliet Neighborhood Services Department conducted a hearing to revoke or suspend Phillips' Certificate of Inspection on April

---

[4] Section 8-160(a) of the Joliet Code states, in relevant part, that : "[i]f the city manager, after a hearing before the city manager or the city manager's designee determines that any person has filed to comply with this chapter, the city manager may suspend or revoke the certificate of inspection held by that person. Such a hearing shall be held not less than five (5) calendar days after notice of time, place and subject of the hearing has been received by the certificate holder at the holder's last known address or business address." The court assumes that a hearing must be held before the city manager or designee can revoke a certificate of inspection.

29, 1998. (Defs.' 56.1 ¶ 55.) Phillips, Toso, Assistant corporation Counsel Mary Kucharz, and Deputy City Manager James Shapard participated in this hearing, (Defs.' 56.1 ¶ 56), with Shapard acting as the hearing officer. (Shapard Aff. ¶ 16, Ex. 6 to Defs.' 56.1 Supplement to Statement of Material Facts.)

At the hearing, Phillips was advised (it is unclear by whom) to repair the property to cure the code violations and pay the outstanding fees for inspection so that he could get a Certificate of Inspection. (Defs.' 56.1 ¶ 55.) Phillips does not dispute this exchange, but adds that Shapard threateningly told him, "I'm gonna [sic] put you out of business, we're gonna [sic] shut you down!" and "I'm shutting you down, you're out of business!' (Phillips Aff. ¶ 9, (Ex. H to Pl.'s 56.1 Resp.) Shapard denies making such statements. (Defs.' 56.1 ¶ 57.)

B. After the April 29, 1998 Hearing

On April 30, 1998, Alexander inspected the property and found that no changes had been made to cure the existing code violations. (Defs.' 56.1 ¶ 58.) Defendants do not explain why the re-inspection occurred only one day after the hearing, nor do they suggest what Phillips might have done in a few hours to correct the deficiencies, but the court understands that Phillips was notified of the code violations on April 6, 1998, at latest. Phillips alleges that Toso told him he would not be given additional time to resolve the code violations and that the reason for shutting down the property was 'payback' because Phillips re-rented his former 509 Sherman Street property.[5] (Phillips Aff. ¶ 10, Ex. H to Pl.'s 56.1 Resp.) On May 4, 1998 the city issued Phillips a Final Notice for Payment of Inspection Fees and Notice of Lack of Current Certificate of Inspection. (*Id.* ¶ 59.) The notice stated that rental inspection fees of $168.00 must be paid in full immediately, and warned, "[s]hould you fail to pay the outstanding balance within that time, not only will your building be posted but your account will be sent to the City of Joliet Legal Department for legal proceedings in

---

[5] Neither party makes any further mention of property at 509 Sherman Street.

order to collect the balance due." (Final Notice for Payment of Inspection Fees & Notice of Lack of Current Certificate of Inspection of 5/4/98, Ex. 3 to Defs. 56.1.) The following day, Phillips was sent another Notice of Property Maintenance Code Violations and a rental inspection invoice with a balance of $222.00 ($54.00 more than the previous balance of $168.00). (Defs.' 56.1 ¶ 60.) On May 26, 1998, Kucharz sent Phillips notice of a second hearing scheduled for June 3, 1998. (*Id.* ¶ 61.) On May 29, 1998, Alexander attempted to inspect the property but Phillips was not present. The record reflects that Phillips was notified about this inspection; the List of Violations from April 30, 1998 inspection states that re-inspection was scheduled for May 29, 1998, as does the Rental Inspection Invoice of May 5, 1998. (List of Violations of 4/30/98 & Rental Inspection Invoice for Reinspection of 4/6/98, Ex. 3 to Defs.' 56.1.) Phillips has not explained why he was repeatedly unavailable for inspections to his property. Alexander was able to inspect 26 Union Street because the tenant was home, and found that conditions had not improved. (Defs.' 56.1 ¶ 62.) On June 1, 1998, Alexander posted the property (both units, the court presumes) as "[n]ot approved for occupancy" because of its poor condition and Phillips' failure to pay inspection fees. (*Id.* ¶ 63.)

C. The June 3, 1998 Status Hearing

The City of Joliet Neighborhood Services Division held a status hearing on June 3, 1998. Shapard preside; Phillips, Kucharz, Toso, and possibly city Manager John Mezera attended. (Defs.' 56.1 ¶ 64.) It is unclear who initiated the hearing, but Phillips received notice from Kucharz dated May 26, 1998. (Notice of Hearing of 5/16/98, Ex. 4 to Defs.' 56.1.) Defendants do not deny Phillips' claim that he paid the city $222.00 on June 3. (Phillips' Aff. ¶ 11, Ex. H. to Pl.'s 56.1 Resp.) At the status hearing, Shapard ordered the property to be posted and declared unfit for human habitation. Phillips claims that Shapard told him: "I can not reverse my decision, as a matter of fact I spoke with Mezera and informed him that I condemned the building and Mezera jumped for joy." (Id. ¶ 12.) Phillips claims that Mezera was present and asked him "[w]here

were you last night when you should have been having the violations corrected, watch the Bulls?" He apparently hurled sever other insults at Phillips, and told Phillips to "[g]et a job. We want the building shut down because you're renting to gangbangers and they are selling drugs from that house." Mezera told Plaintiff that he was "gonna [sic] call [the Housing Authority of Joliet] and have your Section 8 certificate cancelled because there should not be any Section 8 tenants living in the 28 Union Street premises. . . .When you get some good tenants, you bring their names down here and the City will run criminal background checks to see whether or not your tenants are gangbangers." (Id. ¶ 13.) Mezera denies making such statements, and Defendants claim he was not even present at the hearing. (Defs.' Resp ¶ 6; Defs.' 56.1 ¶ 40.)[6]

D. After the June 3, 1998 Hearing

The water at 26-28 Union Street was shut off accidentally on June 3, 1998 because an official had been misinformed that the property was vacant. The city corrected the problem within 24 hours. (Defs.' Resp ¶ 15; Defs.' Resp. to Pl.'s First Set of Interrogatories ¶ 9, Ex. T to Pl.'s 56.1 Resp.) Phillips received a Notice of Emergency Condemnation from Toso dated June 4, 1998, stating that his property was again found to be in violation of the BOCA National Property Maintenance Code,[7] and that the property was going to be condemned. It is unclear whether Toso was referring to a particular inspection. The letter notified Phillips of his right to seek review of the decision by filing a written Notice of Appeal with the City Manager within 72 hours of receipt of the notice. (Notice of Emergency Condemnation of 6/4/98, Ex. 3 to Defs.' 56.1.) Phillips claims that on June 8, 1998 he presented Shapard with a Notice of Appeal, and

---

[6] If Mezera did in fact attend the hearing, the court expects Phillips would have questioned him concerning Shapard's statement that he "jumped for joy" on learning that the building had been condemned.

[7] The parties do not identify BOCA, but he court understands this as a reference to the Mode Codes adopted by Building Officials and Code Administrators, International, Inc.

Kucharz informed him that a hearing would be scheduled. (Pl.'s 56.1 Resp ¶ 27.) There is no dispute that Joliet officials never contacted Phillips about a hearing *(Id.* ¶ 29.)

On June 4, 1998, Toso sent Phillips' tenants notice to vacate the property because the city had condemned it as unfit for human habitation. (Defs.' 56.1 ¶ 65.) On June 5, 1998, Defendants claim that Phillips notified Toso in person at City Hall that he would fix the violations in 28 Union Street by the weekend and asked that the tenants be allowed to stay. Toso replied that all tenants would have to vacate the premises until the building was approved for occupancy. Defendants allege Phillips agreed to "go along" with forcing out the tenants at 26 Union Street. (*Id.* ¶ 66.) Phillips offers a different version of events, claiming that Toso told him there was "no problem" with the tenants staying in the 28 Union Street unit, but the city wanted the tenants residing in 26 Union Street evicted because they were a public nuisance. (Phillips" Aff. ¶ 17, Ex. H to Pl.'s 56.1.) Phillips claims that on June 6, 1998, Alexander told Phillips' tenants, Carlotta Osborne (28 Union Street) and Lawrence Travis (26 Union Street), that they had three days to move out of their units because the building had been condemned and the locks on the entrance doors were going to be changed. (Pl.'s 56.1 Resp. ¶¶ 25, 26.) Phillips claims that during the week of June 8-12, 1998, the original locks were removed and the doors at 26-28 Union Street were padlocked. (*Id.* ¶ 28.) Defendants counter that as of June 12, 1998, Phillips' tenants were still living at the address. (Defs.' Resp. ¶ 25.) Defendants deny ordering anyone to padlock the doors, and Phillips has offered no proof that events unfolded in this manner. (Defs.' Answer to Pl.'s First Set of Interrogatories ¶ 7, Ex. T to Pl.'s 56.1 Resp.) The parties agree that as of June 25, 1998, the building was vacant and posted with "no trespassing" signs. (Defs.' 56.1 ¶ 68.)

E. Phillip's Contract with the Housing Authority of Joliet

Phillips claims that Defendants intentionally influenced the Housing Authority of Joliet ("HAJ") to terminate his Section 8 Moderate Rehabilitation Housing Contract. On June 5, 1998, Joyce Johnson

("Johnson"), Section 8 Housing Coordinator for the HAJ, allegedly told Phillips that she wanted the tenants in 26 Union Street to move out because they were a nuisance. (Phillips Aff. ¶ 16, Ex. H to Pl.'s 56.1 Resp.)[8] Phillips claims Toso told him the same thing that same day; she wanted the tenants residing in 26 Union Street to move. (*Id.* ¶ 17.)

A month later, Phillips received word from Johnson concerning the 28 Union Street unit. By letter dated July 10, 1998, Johnson stated: "According to the documentation received from the City of Joliet and the hearings held with yourself and the City of Joliet, you do not have an inspection permit to rent [28 Union Street] and the property is considered unfit for human habitation. Therefore, the Housing Authority of Joliet has not [sic] choice but to terminate you [sic] Moderate Rehabilitation Contract and use that funding to allow [the former tenant, Carlotta Osborne, who was forced out]...to relocate." (Letter from Johnson to Phillips of 7/10/98, Ex. P to Pl.'s 56.1 Resp.) Phillips blames the termination of his contract on Defendants, but apart from the statements in Johnson's July 10, 1998 letter, Phillips offers no evidence indicating that Joliet officials ever urged the HAJ to cancel his Section 8 contract.

Defendants maintain that the HAJ is not a department of the City of Joliet and the City has no control over the operations or employees of the HAJ. Defendants assert, further, that Mezera has no authority to terminate a contract between the HAJ and another person, and that neither Mezera nor any other Joliet official contacted the HAJ regarding Phillips' Section 8 contract. (Defs.' 56.1 ¶¶ 38-41.) Defendants do not recall having contacted Johnson regarding 26-28 Union Street, but they point out that Johnson sometimes attends City of Joliet administrative hearings regarding real property. (Defs.' Answers to Pl.'s First Set of Interrogatories ¶ 5, Ex. T to Pl.'s 56.1 Resp.)

F. Events since 1998

---

[8] The court notes that Defendants claim Phillips' Section 8 contract for Union Street was terminated in March 1998. (Defs.' Resp. ¶ 34.)

In May 1999, Joliet initiated legal action against Phillips and the Chemical Mortgage Company (presumably Phillip's mortgage lender) pursuant to Chapter 65 of the Illinois Compiled Statutes, as amended, Section 5/11-31-1 et seq. And Section 5/1113-15, and Section 8-122 et seq. Of the Code of Ordinances of Joliet. (Complaint for injunction, Demolition, and Other Relief, Ex. Z to Pl.'s 56.1 Resp.) Citing the property's history of disrepair, the City sought authorization to tear down the building. (*Id.*) In October 1999, the Circuit Court of the Twelfth Judicial Circuit, Will County, authorized Joliet to demolish the building at 26-28 Union Street, and ordered that the costs of abating the nuisance caused by the demolition be charged to the owner of the property. (Decree of Demolition, Ex. Z, Pl.'s 56.1 Resp.)

DISCUSSION

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." FED.R.CIV.P. 56(c); *see also Flores v. Preferred Tech. Group*, 182 F.3d 512, 514 (7th Cir. 1999). In determining whether factual issues exist, the court must view all the evidence in the light most favorable to the non-moving party. *Flores*, 182 F.3d at 514. An issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Carter v. American Oil Co.*, 139 F.3d 1158, 1161 (7th Cir. 1998) (citation omitted). Only disputes that could affect the outcome of the suit under governing law will preclude an entry of judgment for the moving party.

B. Sections 1981 and 1982

In Counts I and II of his Second Amended Complaint, Phillips alleges violations of 42 U.S.C. §§ 1981(a) and 1982, which guarantee that all citizens have the same rights as white citizens to make and enforce contracts (1981) and to lease and convey real property (1982). Section 1981 addresses racial discrimination in contractual relationships. As amended by the Civil Rights Act of 1991, the statute read in relevant part:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . .as is enjoyed by white citizens . . . .
> (b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
> (c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1981(a)-(b). Section 1982 deals with discrimination in property transactions. It states:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 1982. Section 1982 was enacted to enable Congress to enforce the Thirteenth Amendment and, particularly, to prohibit all racial discrimination, private and public, in the sale and rental of property. *Jones v. Alfred H. Mayer Co* , 392 U.S. 409, 437 (1968).

Because of their common origin in the Civil Rights Act of 1866 and their common purpose, § 1981 and § 1982 are generally construed in

tandem. See *Tillman v. Wheaton-Haven Recreation Ass'n. Inc.*, 410 U.S. 431, 439-40 (1973). A claim under either section is established when a plaintiff shows (1) he is a member of a racial minority; (2) the defendant has an intent to discriminate on the basis of race; and (3) the discrimination involved one of the activities enumerated in the statutes (i.e. making and enforcing a contract or owning property). *Morris v Office Max, Inc.*, 89 F.32d 411, 413 (7th Cir. 1996). Defendants do not contest that Phillips is a member of a racial minority; rather, they argue that Phillips' claims fail under prongs two and three. Because Defendants' arguments concerning the third prong can be addressed readily, the court turns first to the issue of whether property or contract rights are involved here, and then addresses the issue of intentional discrimination.

1. Do Phillips' Claims Involve Contract and Property Rights Contemplated By Sections 1981 and 1982?

Defendants argue that they did not interfere with Phillips' right to contract with the HAJ, nor did they deprive him of the right to own and hld 26-28 Union Street. They argue that because the HAJ is not a department of the City of Joliet and the city has no control over the policies and procedures of the HAJ, there can be no link between their actions and the cancellation of Phillips' Section 8 contract. Finally, Defendants argue that Phillips' claim under Section 1982 fails because they did not deprive him of the ownership of his property; rather, they condemned it. If Phillips ultimately lost his property due to mortgage foreclosure, this is beside the point, according to Defendants.

These arguments challenge not only the factual basis for Phillips's claims, but also their legal sufficiency. Because, as discussed below, Phillips has not offered evidence of intentional discrimination by Joliet officials. Defendants are entitled to summary judgment on these claims. The court therefore need not reach the factual issues of whether Joliet officials actually had authority to interfere with this HAJ contract or whether Phillips has presented evidence that they did take such action. To the extent that Defendants challenge the legal sufficiency of Phillips'

claims, however, their objection will be overruled. Phillips alleges tha Defendants improperly interfered with his relationship with the HAJ an urged the HAJ to terminate his Section 8 contract. This, according t Phillips, led directly to his inability to make mortgage payments an ultimately to the foreclosure of his property. Section 1981 proscribes no only discrimination by the contracting party (here HAJ), but als discriminatory interference by third parties. Vakharia v. Swedish Covenant Hosp., 765 F. Supp. 461, 471 (N.D. Ill. 1991).

As for Phillips' Section 1982 claim, Phillips also alleges that racia animus led the Defendants to act in a manner that led to the condemnatio and ultimately the sale of his property. He essentially argues tha Defendants deprived him of the right to "lease" his property, as mentioned in the statute. He also alleges that because his property was condemned and his Section 8 contract cancelled, he was unable to make mortgage payments which ultimately led to foreclosure. Again, putting the factual sufficiency of these claims to one side, the court concludes they do state claims within the scope of Sections 1981 and 1982.

2. Did Defendants Intend to Discriminate Based on Race?

The more difficult question here is whether Phillips has presented evidence of intentional discrimination. In proving a Section 1981 or 1982 claim, a plaintiff may present either direct evidence of discrimination or may instead proceed on the indirect method of proof set forth in *McDonnell Douglas Corp. v. Green.*[9] 411 U.S. 792, 802 (1973). *See Sanghvi v. St Catherine's Hosp., Inc.*, 258 f.3d 570, 577 (7th Cir. 2001) (applying McDonnell Douglass standard to a section 1981 contract case outside the employment context). Although Phillips asserts that Mezera and Shapard made insulting comments to him at the April 29 and June 3 hearings, he has not argued his case as one of "direct evidence," instead

---

[9] Section 1981 and 1982 claims are subject to the same methods of proof as race discrimination claims under Title VII of the Civil Rights Act of 1964. Johnson v. City of Fort Wayne, 91 F.3d 922, 940 (7th Cir. 1996).

referring to the shifting-burdens method of proving a disparate treatment claim and comparing Defendants' treatment of him with the treatment accorded to five other property owners in Joliet. To succeed in this approach, Phillips must show that Defendants treated him less favorably than other property owners because of his race. *International Broth. Of Teamsters* v. U.S., 431 U.S. 324, 335, n. 15 (1977). As our Court of Appeals has explained in the employment discrimination context, Phillips is not required to show "complete identity" between himself and the persons with whom he compares himself, but he must show a "substantial similarity." *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 618 (7th Cir. 2000).

Phillips alleges that Defendants were motivated by racial animus in bringing about the termination of his HUD Section 8 Moderate Housing Contract and interfering with Phillips' property rights in the rental units at 26-28 Union Street. To prove his case, Phillips claims that he was treated differently than five property owners - James Wyatt, Senovio Benavides, Al Stewart, Ronald Schultz, and Willard Majorsky - whom he claims are all white and all similarly situated to him. (Pl's 56.1 Resp., Ex. K1-K4.) Phillips claims Defendants followed a different set of procedures when the "white" property owners were cited for Joliet code violations than they followed when his property was involved. (*Id.*) Phillips states that when each of these property owners failed to fix the code violations, Defendant Kucharz, pursuant to Section 20-8 of the Code of Ordinances of the City of Joliet, initiated legal proceedings through the Circuit Court of Will County to secure a court order authorizing condemnation of their property. The court understands Phillips to say that he should have been brought to court before his property was condemned and his tenants evicted.

Upon review of the record, the court concludes that the evidence is insufficient to establish Phillips' claim of disparate treatment. First, Phillips presented no evidence that Joliet officials kept records of the racial backgrounds of property owners. In fact, Phillips himself has not offered any proof of the race of the individuals he claims received different treatment. The closest he comes to meeting this burden is presentation of two affidavits of proof of service on James Wyatt. In one of these, the

affiant notes that Wyatt's race is "C," for Caucasian. In the other, the notation reads "W," for white. (Affidavits of Proof of Service 7/27/95 and 11/27/96, Ex. K1 to Pl.'s 56.1 Resp.) Although this is sufficient, for purposes of summary judgment, to establish that Wyatt is white, it does not prove that City of Joliet officials kept records of property owners' race, nor does it prove that race motivated city officials' actions.

Nor does the court believe Phillips has met his burden of showing that the five property owners were treated more favorably than he. Phillips points, first, to the case of Willard Magosky, owner of the Woodcreek Mobile Homes park, and argues that Magosky received more favorable treatment than he did. In 2000, Magosky got into trouble with Joliet Officials because he failed to honor a 1997 annexation agreement with the city in which he agreed to correct environmental infractions by connecting the trailer park to the municipal sewer system. (Guy Tridgell, *City Won't Budge in Trailer Fight*, HERALD NEWS, June23, 2000, at A1, Ex. K4 to Pl.'s 56.1 Resp.) His trailer park was also cited for numerous code violations. (See Lists of Code Violations, Ex. K4 to Pl.'s 56.1 Resp.) Based on the evidence supplied by Phillips, however, the court fails to see how Magosky received better treatment. Toso sent Magosky a Notice of Emergency Condemnation on April 4, 2000 stating that due to the severity of the violations on his property, "the building or affected part has been condemned, placarded, declared unfit for human habitation and must be vacated immediately and cannot be reoccupied until all violations re corrected." The letter notified Magosky that if he and his tenants failed to vacate the premises, a complaint and summons would be issued for him to appear in the Will County Circuit Court. (Notice of Emergency Condemnation of 4/4/00. Ex. K4 to Pl.'s 56.1 Resp.) In June 2000, Richard Bazzarone, Director of Inspection Services for the City of Joliet, ordered Magosky and his tenants to vacate the property. (Notice of Unfitness for Occupancy and Order to Vacate of 6/14/00, Ex. K4 to Pl.'s 56.1 Resp.) On June 14, 2000, City inspectors posted the individual trailers and the entire park with a Notice of Unfitness for Occupancy and an Order to Vacate the Property. On June 22, 2000, Deputy City Manager Shapard presided over a hearing to determine whether arguments against

the postings had merit. (Letter from Shapard to Magosky of 6/22/00, Ex. K4 to Pl.'s 56.1 Resp.) Shapard determined that the posting of the trailer park and individual trailers were valid and upheld the notices and order to vacate. (*Id.*) An article that Phillips himself supplied the court indicates that the city closed the trailer park on July 14, 2000. (Guy Tridgell, *City Won't Budge in Trailer Fight*, HERALD NEWS, June 23, 2000, at A1, Ex. K4 to Pl.'s 56.1 Resp.)

Phillips has not provided the court with evidence that Joliet officials proceeded in court against Magosky before condemning his property and ordering his tenants to vacate. Instead, from this record it appears that both Phillips and Magosky were treated in the same way. Phillips was cited for code violations, two hearings were held, and his property was condemned. Magosky's case followed a similar path. His property was condemned, a hearing was held, and his trailer park was closed. This evidence does not support Phillips's claim that Magosky received different, more favorable treatment.

Evidence concerning James Wyatt is similarly unconvincing. Phillips has provided evidence that James Wyatt owned several properties in the City of Joliet from at least the late 1980s through 2001. Numerous complaints were filed against Wyatt by City of Joliet inspectors for failing to abate code violations and for renting his properties without a valid certificate of inspection. (See generally Ex. K1 to Pl''s 56.1 Resp.) Multiple inspections were conducted of Wyatt's properties, and Wyatt was cited for several code violations over several years. Apparently some of Wyatt's properties were deemed eligible for Certificates of Inspection, although it is not clear whether Wyatt ever paid his overdue fines necessary to receive the certificates. (*See* Final Notice for Payment from Reuben Arthur, Property Maintenance Coordinator of the Neighborhood Services Division of the City of Joliet to Wyatt of 9/16/93, Ex. K1 to Pl.'s 56.1 Resp.) On at least one occasion one of Wyatt's properties was condemned. (*See* Notice to Tenants to Vacate Unsafe Property of 1/18/96, Ex. K1 to Pl.'s 56.1 Resp.) To overcome Defendants' motion for summary judgment, Phillips has to prove that he was treated less favorably than similarly situated individuals. International Broth. of Teamsters, 431 U.S.

at 335, n. 15. Assuming Wyatt and Phillips are similarly situated, the court is at a loss to understand why Phillips, who had two hearings and several opportunities to improve his property, believes he was treated less favorably than Wyatt.

Phillips provides even less material on Benavides, Stewart and Schultz, not enough for the court to conclude whether they were similarly situated to Phillips or whether they received better process from the city. Defendants explain that the legal actions against the property owners cited by Phillips were filed pursuant to Section 20-3 of the Code of Ordinances of the City of Joliet, in which a citizen or tenant may file a complaint, which then leads to an inspection by the City. JOLIET, ILL. CODE § 20-3. Section 20-1 states "[t]his chapter is intended to establish a supplemental procedure for the abatement of nuisances and is not intended to supplant any other procedure set forth by law or ordinance. . . ." Id. § 20-1. In Phillips' case, Defendants, urge, inspections were prompted not by citizen complaints, but by the language of Section 8-152 of the Joliet Code, which requires that "two-family dwellings. . . shall be inspected systematically for compliance with this Code and all other applicable laws." Id. § 8-152. The law makes a number of exceptions, none of which Phillips argues apply to him. Phillips does not rebut Defendants' argument that Section 8-152 required them to inspect his property, and that because no citizen or tenant filed such a complaint against Phillips, Section 20-3 is irrelevant to the case at hand.[10]

City of Joliet officials did eventually proceed in court against Phillips pursuant to Section 20-8 of the Code of Ordinances of Joliet and 65 ILCS 5/31-11-1(a), fourteen months after Phillips claims the city evicted his tenants, to secure an order authorizing the demolition of the property. (Complaint for Injunction, Demolition, and Other Relief, Ex. Z to 56.1

---

[10] The court notes that in some instances, the individuals who filed complaints in the cited cases were inspectors for the City of Joliet, including inspector Alexander, the same individual who inspected Phillips' property. (Complaint against James Wyatt of 11/6/96, Ex. K1 to Pl.'s 56.1.) This fact does not defeat summary judgment, however, where Phillips has not demonstrated that Alexander's "citizen's complaint" against Wyatt resulted in more favorable treatment than Phillips received as a target of Alexander's statutorily-mandated inspection.

Resp.) The complaint alleged that the property was abandoned and for various reasons constituted a public nuisance and a dangerous structure. (*Id.*) Phillips is apparently arguing that he should have been taken to court before his property was condemned or his tenants evicted, but as noted, the court is not convinced this procedure was followed with respect to Magosky or Wyatt. Phillips has not provided the court with evidence establishing that Joliet's policy for dealing with code violations in the mid-to-late 1990's was to initiate legal action pursuant to Section 20-3 prior to condemning property or evicting tenants. For the foregoing reasons, the court concludes that Phillips has not provided sufficient evidence to show he was treated less favorably than the other property owners he cites.

Phillips points to other actions taken by Defendants to prove he was the victim of racial discrimination. He alleges that there was no reason for Defendants to inspect his building when they did because his inspection certificate was valid until November 23, 1998. The implication is that Defendants purposely sent an inspector to harass him. The language of the certificate Phillips relies on itself defeats this argument, however. The certificate of inspection provided to the court states that "[t]his Certificate expires on the above date [11/23/98] unless sooner suspended or revoked. This Certificate is not a representation, warranty, or guarantee that the dwelling inspected meets all of the requirements for such dwellings." (Certificate of Inspection, Ex. A to Pl.'s 56.1 Resp.) The language "unless sooner suspended or revoked," if it means anything, must mean that interim inspections were anticipated. In any event, even if Phillips is correct that the certificate can be interpreted as excusing his property from any inspections for a four-year period, he has not demonstrated that the City's decision to conduct an inspection several months earlier was the product of racial discrimination.

Phillips' final piece of evidence in support of his claims is a post-hearing letter to Al Stewart (one of the allegedly white property owners), informing Stewart of the determinations made at his March 15, 2001 hearing to discuss the nonpayment of rental fees.
(Letter from Shapard to Stewart of 3/20/01, Ex. G to Pl.'s 56.1 Resp.) Phillips complains that he did not receive this "customary" post-hearing

letter. Defendants counter that the correspondence sent to Al Stewart was not customary in 1998, when Phillips' hearings took place. (Defs." Resp. ¶ 12.) Phillips does not provide evidence to controvert this assertion.

CONCLUSION

Accepting Phillips' rendition of the facts as true, the court concludes that he has not met his burden of proving a prima facie case of racial discrimination. Although he has successfully shown that he is a member of a racial minority and that his claims fall within the purview of Sections 1981 and 1982, Phillips has not shown discriminatory intent on the part of city officials. Morris, 89 F.2d at 413. Phillips has never challenged the accuracy of the inspection reports showing that his rental property suffered from numerous uncorrected code violations. Nor has he demonstrated that Joliet officials accorded more favorable treatment to similarly situated white property owners. Summary judgement for Defendants Mezera, Toso, Shapard and Kucharz is therefore appropriate. Because none of the city officials can be found liable, summary judgment must also be granted to Defendant City of Joliet.

Dated: November 25, 2002

REBECCA R. PALLMEYER
United States District Judge

GARFIELD PHILLIPS
Plaintiff,

v.

JOHN MEZERA, JAMES SHAPARD, JOYCE TOSO,
MARY KUCHARZ and CITY OF JOLIET
Defendants.

No. 00 C 3348

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

October 31, 2001, Decided

MEMORANDUM OPINION AND ORDER

Plaintiff Garfield Phillips ("Phillips"), pro se, claims that Joliet officials violated his civil rights when they declared his rental property unfit for human habitation and evicted his tenants. On February 21, 2001, this court dismissed Plaintiff's amended complaint for failure to state a claim, but granted him leave to file a second amended complaint if he could cure the deficiencies in the earlier pleading. On March 14, 2001, Plaintiff filed his second amended *pro se* complaint against the City of Joliet and Joliet officials John Mezera ("Mezera"), James Shapard ("Shapard"), Joyce Toso ("Toso"), and Mary Kucharz ("Kucharz"). In the second amended complaint, Plaintiff again alleges that Defendants violated his civil rights when they evicted tenants from rental property he owns and interfered in the renewal of his HUD Section 8 Moderate Housing Contract. He further alleges that Defendants negligently failed to comply with the City's own policies. Defendant has once again moved to dismiss for failure to state a claim.

A *pro se* complaint is held to "less stringent standards than formal pleadings drafted by lawyers, "*Haines v. Kerner*, 404 U.S. 519, 520 (1972), and can be dismissed for failure to state a claim only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). A *pro se* complainant can, nevertheless "plead himself out of court" by pleading facts that undermine the allegations set forth in his complaint. See *Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir. 1997). For the reasons set forth below, Defendants' motion is granted in part and denied in part.

FACTS

In considering Defendants' motion to dismiss, the court presumes that all allegations in the Plaintiff's complaint are true. *Leatherman v. Tarrant County Narcotics & Intelligence Unit*, 507 U.S. 163, 164-65 (1993). To provide as complete a chronology as possible, the court refers not only to the allegations of the Second Amended Complaint, but also to the First Amended Complaint. In December 1994, Plaintiff purchased a two-unit rental property at 26-28 Union Street ("property") in Joliet. (Second Amended Complaint ¶ 12.) Plaintiff alleges that two items were transferred to him as part of the property transaction: a four-year Certificate of Inspection issued by the City of Joliet to the previous owner in December 1994 and a fifteen-year HUD Section 8 Moderate Housing Contract issued on April 1, 1985 by the Housing Authority of Joliet ("HAJ") entitling Plaintiff to maintain pre-existing tenants in the property. (*Id.* ¶¶ 11, 14.)

On January 16, 1998, an inspector for HAJ conducted an inspection of Phillips' property and issued a Summary of Inspection listing various repairs to be made to the property by February 23, 1998. (*Id.* ¶ 19; HAJ Summary of Inspection, Ex. A to Second Amended Complaint.) On March 2, 1998, an inspector for HAJ provided Plaintiff with an Approved Summary of Inspection showing he had completed the repairs required by the first inspection. (Second Amended Complaint ¶ 20; HAJ Summary of

Inspection, Ex. B to Second Amended Complaint.)

On March 11, 1998, Kenneth Alexander ("Alexander"), an inspector from Joliet's Neighborhood Services Department posted a "Bldg. Code document" on Phillip's property. Although Plaintiff has not otherwise described the document, he alleges that Alexander posted it because he could not enter the property to conduct an inspection. (Second Amended Complaint ¶ 21.) On March 12, 1998, Alexander told Plaintiff he would send written notification of the re-scheduled inspection. (*Id.* ¶ 22.)

On April 29, 1998, Joliet's Neighborhood Service Department conducted a hearing regarding Phillips' property, pursuant to notice. (*Id.* ¶ 23.) Plaintiff's complaint does not identify the purpose, findings, or outcome of this hearing. In his earlier complaint, Plaintiff did allege the Defendant Toso, the City's Property Maintenance Coordinator, advised him during the hearing "that he had not paid the $220.00 Inspection Fees and that there existed some minor Bldg. Code violations that needed to be corrected" at the property. (Amended Complaint at ¶ 26(a).) Defendant Toso informed Plaintiff that he would not be given additional time to cure the violations. (*Id.* ¶ 26(c).) Plaintiff claims that at the hearing, a police officer confirmed that the exterior of the property was in good condition and that there were no public disturbances calls regarding the property. (Second Amended Complaint ¶ 24.) Plaintiff also alleges that at the hearing, Defendant Shapard, in a "loud and intimidating voice" told him, "I'm gonna put you out of business, we're gonna shut you down." *(Id.* at ¶ 25(a).)

A re-inspection of Plaintiff's property took place the following day, April 230, 1998. (Notice of Property Maintenance Code Violations, Ex. C to Second Amended Complaint.) Plaintiff received a "Notice of Property Maintenance Code Violations" dated May 5, 1998 from Defendant Toso resulting from that inspection. The Notice explains that Plaintiff's property had "recently been inspected for compliance with BOCA National Property Maintenance Code [as] required by Section 8-152 of the Joliet Code of Ordinances." (Second Amended Complaint at ¶ 26, Ex. C to Second Amended Complaint.) The notice contained a list of 26 code violations discovered during the inspection-including broken

windows, a defective stove, defective ceiling and floor coverings, and broken or missing electric fixtures-and set forth a recommended procedure for correcting each violation. (*Id.*) The Notice explained Plaintiff had "the right to a hearing concerning [the] notice" and in order to exercise such right he must file a "written hearing request with the City Manager within 72 hours of receiving [the] notice." (*Id.*) Finally, the Notice explained that the violations set forth in it were only those pertaining to the BOCA National Property Maintenance Code, and correction those violations would not relieve Plaintiff from bringing property into full compliance with all applicable legal requirements, including the Joliet Zoning Ordinance. (*Id.*) The record does not indicate what exactly the "BOCA National Property Maintenance Code" is, nor has Plaintiff alleged that he filed a time request for a hearing.

Around June 3, 1998, Plaintiff paid an inspection fee of $220.00 for his property and asked Defendant Shapard, the Deputy City Manager, for further additional time to correct the alleged building code violations. (Amended Complaint ¶ 26(g).) Shapard responded by saying, "I cannot reverse my decision, as a matter of fact I spoke with Mezera and informed him that I condemned the building and Mezera jumped for joy." (*Id.* ¶ 26(g); Second Amended Complaint ¶ 27(a).) After this conversation with Shapard, Plaintiff encountered Defendant Mezera, Joliet City Manager, and informed him that Plaintiff had Chapter 13 bankruptcy protection and that the HAJ had granted him a year re-certification for his HUD Section 8 Housing Contract for the property. (Amended Complaint ¶ 26(j), (m); Second Amended Complaint ¶ 27.) Mezera responded by asking Plaintiff if he was "watching the Bulls when he should have been getting his property repaired." (Second Amended Complaint ¶ 27(b).) Mezera urged Plaintiff to "give the house back to the bank" and accused him of renting to gangbangers . . . [who] are selling drugs from that house." (*Id.*) Mezera also threatened to "call HAJ and have [Plaintiff} Section 8 certification cancelled because there should not be any Section 8 tenants living in the 28 Union Street Premises." (Amended Complaint ¶ 26(m).)

Also around June 3, 1998, City Officials allegedly terminated water service to the property and directed police to tell Phillips' tenants they had

to move out. (Second Amended Complaint ¶ 28.) Plaintiff alleges these actions were taken "without any lawful justification" but Plaintiff does not claim he had corrected any outstanding code violations brought to his attention either at the April 29 hearing or during the April 30 BOCA inspection. (Id. ¶ 28.) On June 6, 1998, Plaintiff received a Notice of Emergency Condemnation. (*Id.* ¶ 31; Notice of Emergency Condemnation, Ex. E to Second Amended Complaint.) That same day Plaintiff's tenants received a Notice to Tenants to Vacate Unsafe Property. (Second Amended Complaint ¶ 31; Notice to Tenants to Vacate Unsafe Property, Ex. F to Second Amended Complaint.) Around June 8, 1998 Plaintiff presented Shapard with a notice of appeal from the condemnation decision. (Second Amended Complaint ¶ 32; Phillips letter, Ex. G to Second Amended Complaint.) Defendant Kucharz, Assistant Corporate Counsel for Joliet, promised Plaintiff that there would be a hearing on his appeal after Mezera's return from an out of town trip, but no such hearing has ever taken place. (*Id.* ¶¶ 33-34.)

Plaintiff alleges "that prior to Defendant Joliet's forceful removal of the original door locks from off the doors and the placing of Defendant Joliet's padlocks on the doors of . . . [property]. . . Defendant Joliet did not convene a formal administrative hearing on [Plaintiff's] timely filed Notice of Appeal. . . as provided to other citizens under similar circumstances." (*Id* ¶ 35.) He also alleges that Defendants failed to obtain a court order from the Circuit Court of the Twelfth Judicial Circuit authorizing action against Plaintiff's
property as required by 65 ILCS 5/11-31-1(a).
(*Id.* ¶ 36.) Plaintiff admits that code violations existed at his property but contends they "did not rise to a critical level which necessitated the need to either declare the property as being unsafe for occupancy. . . ." (*Id.* ¶ 39.)

Around July 10, 1998, the HAJ issued Plaintiff a written notice terminating the March 2, 1998 recertification of his HUD Section 8 Moderate Housing Rehabilitation Contract because "documentation

received from the City of Joliet and the hearings held with [Plaintiff] and the City of Joliet [showed Plaintiff did] not have an inspection permit to rent [the property] and the property is considered unfit for human habitation." (*Id.* ¶ 37; Housing Authority letter, Ex. I to Second Amended Complaint.) The HAJ concluded that is was required to terminate [Plaintiff's] Moderate Rehabilitation Contract and use that funding to allow [Plaintiff's tenant] to relocate." (Second Amended Complaint; Ex. I to Second Amended Complaint.) Plaintiff alleges that as "a direct and proximate result of defendant(s) . . .concerted actions and/or inaction . . . Phillips' HUD Section 8 Moderate Housing Contact was terminated . . . " (Second Amended Complaint ¶ 41.)

Plaintiff believes these allegations support five claims. In Count I, he alleges a violation of the guarantee under 42 U.S.C. § 1981 (a) that he have equal rights to make and enforce contracts as white citizens. Count II alleges a violation of the guarantee under 42 U.S.C. § 1982 that he have the same rights to own property as enjoyed by white citizens. Count III is a claim under 42 U.S.C. § 1983 that the individual Defendants have deprived him of property without due process. Count IV asserts a similar claim against Defendant City of Joliet. Count V alleges that Defendants were negligent in failing to act with reasonable and due care, and to comply with City Ordinances and Illinois statutes.

Defendants have moved to dismiss all five claims for failure to state a claim for relief. They contend that Plaintiff was not denied due process since he was granted a hearing concerning code violations at his property on April 29, 1998. To the extent that Phillips' allegations concerning state law establish a claim, Defendants urge that because Joliet is an Illinois home-rule municipality pursuant to Article VII of the Illinois Constitution, they are not required to adhere to state laws contrary to local ordinances. Therefore Defendants were not required to obtain a court order to "condemn" Plaintiff's property. They also assert that Plaintiff's allegations do not support the claim that he was treated differently than white property owners under similar circumstances and that any alleged negligence in

onnection with failure to follow City policies does not support a claim for elief. The court address these arguments in turn.

DISCUSSION

A. Unequal Treatment

In Counts I and II, Plaintiff alleges violations of 42 U.S.C. §§ 1981(a) and 1982, which guarantee that all citizens will have the same rights as white citizens to make and enforce contracts and to lease and convey real property. Because of their common origin in the Civil Rights Act of 1866 and their common purpose, § 1981 and § 1982 are generally construed in tandem. See *Tillman v. Wheaton-Havens Recreation Ass'n, Inc.*, 410 U.S. 431, 439-40 (1973). To state a claim under either of these provisions, Plaintiff must allege that 1) he is a member of a racial minority; 2) Defendants has an intent to discriminate on the basis of race; and 3) the discrimination concerned activities enumerated in the statutes (i.e. making and enforcing a contract or owning property). *Morris v. Office Max, Inc.*, 89 F.3d 411, 413 (7th Cir. 1996).

In Counts I and II, Plaintiff alleges that Defendants were motivated by "racial animus" in bringing about the termination of Plaintiff's HUD Section 8 Moderate Housing Contract and interfering with Plaintiff's property rights in the rental units. Plaintiff further alleges that Defendants "have never done [such things] to any other citizen either under similar circumstances or similarly situated." Read narrowly, Plaintiff's complaint alleges discrimination, without explicitly identifying an underlying racial basis. In assessing a motion to dismiss, however, it is not this court's job to read complaints narrowly. Within the context of Plaintiff's complaint, it can be reasonably inferred that Plaintiff intends to attribute the allegedly inconsistent conduct on the part of Joliet officials to their "racial animus". In light of the obligation to liberally construe complaints by pro se plaintiff's, McCormick v. City of Chicago, 230 F.3d 319, 325 (7th Cir.

BEST AVAILABLE COPY

2001), and the Seventh Circuit's holding that complaints may plead conclusions without alleging all the facts entailed by the claim, *Bennett v. Schmidt*, 153 F.3d 516, 518, 518 (7th Cir. 1998), the court denies Defendants' motion to dismiss Plaintiff's § 1982 claims.

B. Deprivation without Due Process

In Counts III and IV, Plaintiff claims Defendants deprived him of his property rights without due process. First, Plaintiff contends he was deprived of a protected interest in renting his property without due process because he was not granted a post-deprivation hearing after his tenants were evicted. Defendants point out that Plaintiff's own allegations show he was given notice and an opportunity to be heard, fulfilling the mandates of due process, before his tenants were evicted. Plaintiff's earlier amended complaint and his ore recent complaint allege that he was granted a hearing on April 29, 1998 and that code violations were addressed at this meeting. Violations were again brought to the Plaintiff's attention after a re-inspection on April 30, 1998. Plaintiff was advised of his right to a hearing in order to contest these violations. In his very detailed complaint, he does not allege having requested such a hearing.

Plaintiff's property was then declared unfit for human habitation and condemned , after which Plaintiff filed a timely appeal. [1] Plaintiff alleges that although Defendant Kucharz told him there would be a hearing on Plaintiff's appeal, no such hearing ever took place. Defendants' alleged failure to conduct a hearing on Plaintiff's challenge to the condemnation of his property is puzzling. Notably, however, Plaintiff's own allegations demonstrate that he was granted a pre-deprivation hearing, and he has not alleged that he had any new basis for further challenging Defendants'

---

[1] The notice informing Plaintiff that his prperty had been condemned mentions that his right to "seek review, modification or withdrawal' exists for only 72 hours from receipt of the letter. (Ex. E to Second Amended Complaint.) The text of the notices does not mention a hearing, much less explicitly create the right to one.

decision to evict his tenants. He has not even alleged that his property was free of the building code violations that resulted in the condemnation; instead, he alleges that the violations were not so serious that the property was unfit for habitation. At the pre-deprivation hearing on April 29, and again on June 3, 1998, Plaintiff appealed to Joliet officials for additional time to cure the violations. Their refusal to allow additional time dies not constitute a denial of due process. Nor does their disagreement with Plaintiff's assessment of the seriousness of the code violations indicate that his constitutional rights have been violated.

Plaintiff next contends he was deprived of a protected property interest in renting his property without due process because Defendants did not obtain a court order before condemning his property as required by 65 ILCS 5/11-31-1. Defendants observe that because the city of Joliet is a home-rule municipality as defined by Article VII of the Illinois Constitution, it has the power to legislate concurrently with, and contrary to, the State of Illinois. Once the City adopts ordinances contrary to Illinois State statutes, the ordinances prevail unless the General Assembly has specifically preempted a home rule exercise of power. See generally *People of the State of Illinois ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 524-25, 724 N.E.2d 132, 138 (1st District. 1999); *Demick v. City of Joliet*, 135 F. Supp.2d 921 (N.D. Ill.2001). No such preemption provision appears in this state statute cited by Plaintiff and therefore if the City has legislated otherwise, it was not necessary for Defendants to obtain a court order. Even if the City has not legislate otherwise, the mere fact that Defendants may have violated some provision of state law does not necessarily establish a deprivation of federal rights. See *Pierce v. Village of Divernon*, 17 F.3d 1074, 1079 (7th Cir. 1994) ("Plaintiffs' due process claim [challenging Village's demolition of their home] does not necessarily require us to determine whether the Village complied with the requisite Illinois procedures, but only whether the procedures actually followed were consistent with due process.") The court concludes that Plaintiff's complaint does not state a claim for deprivation of due process.

C. Negligence

In Count V, Plaintiff alleges that City officials acted negligently in failing to carry out the City's own stated policies. Plaintiff alleges that the individual Defendants breached three duties: a)to comply with the aforementioned 65 ILCS 5/11-31-1.; b)to comply with Defendant Joliet's policy providing for formal Administrative hearing on timely filed notice of appeal; and c) to comply with a city ordinance in promoting faith and confidence of the citizens in their government.

The court concludes that none of these allegations adequately states a claim. First, for the reasons mentioned above, it is not clear that the individual Defendants had a legal duty to comply with the Illinois statute if it conflicted with an ordinance in their home-rule municipality. Second, there is no legal basis for Plaintiff's clam that Joliet had a policy of providing formal administrative hearings for time appeals to condemnation notices. Plaintiff's allegation of such a policy rests on a misreading of the Notice. Finally, even if Plaintiff has correctly identified a municipal duty to promote the faith of citizens in good government, this court concludes that there is no private right of action to enforce such a duty. [2]

CONCLUSION

Defendants' motion to dismiss the Second Amended Complaint (Doc. No. 25-1) is granted in part and denied in part. Plaintiff's

---

[2] Without ruling on an issue not briefed by the parties, the Court notes that even a cognizable claim of negligence against Defendants might be barred by the Illinois Tort Immunity Act. *See, e.g.*, 745 ILCS 10/2-201 (providing that "a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused"); and 745 ILCS 10/2-109 (providing that a local public entity is not liable "for an injury resulting from an act or omission of its employee where the employee is not liable"). *See also Village of Bloomingdale v. CDG Enters., Inc.*, 196 Ill.2d 484, 493, 752 N.E.2d 1090, 1098 (2001) (under Illinois Tort Immunity Act, statutory immunity applies even where conduct is motivated by "corrupt or malicious motives").

allegations do not support a claim that was deprived of a property interest with due process. Accordingly, Counts III and IV of Plaintiff's Second Amended Complaint are dismissed with prejudice. Similarly, Plaintiff does not state a legally cognizable claim in tort, and Count V of his Second Amended Complaint is dismissed with prejudice. Plaintiff has stated a cognizable claim of racial discrimination, however, and Defendants' motion to dismiss Counts I and II of the Second Amended complaint are denied. Defendants are directed to answer the allegations set forth in those Counts on or before November 19, 2001.

October 31, 2001

Rebecca R. Pallmeyer
United States District Judge